

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**SHORT HOP MOVING, INC.,

Respondent.**

**Docket No. FMCSA-2008-0243¹
(Eastern Service Center)**

ORDER REJECTING SETTLEMENT AGREEMENT

1. *Background*

On May 29, 2008, the Field Administrator for the Eastern Service Center, Federal Motor Carrier Safety Administration (Claimant) served a Notice of Claim (NOC) on Short Hop Moving, Inc. (Respondent). The NOC, based on a May 14, 2008 compliance review, charged Respondent with one violation of 49 CFR 375.211(a), failure to participate in an arbitration program, with a proposed civil penalty of \$2,400; and one violation of 49 CFR 392.9a(a)(1)/14901(d)(3), operating without the required operating authority (household goods), with a proposed civil penalty of \$25,000. The NOC asserted a total proposed civil penalty of \$27,400.

After Respondent failed to respond to the NOC, Claimant served a Notice of Default and Final Agency Order (NDFAO) on July 7, 2008. The NDFAO advised Respondent that the NOC would become the Final Agency Order in this proceeding effective July 14, 2008, with the civil penalty immediately due and payable on that date. On July 14, 2008, Respondent served a Petition for Reconsideration of the NDFAO, to which Claimant responded on August 6, 2008. On January 7, 2010, I issued an Order denying Respondent's Petition for Reconsideration,

¹ The prior case number was MD-2008-0077-US1263.

declaring the NOC to be the Final Agency Order in this proceeding, and stating that the civil penalty asserted in the NOC was due and payable on January 9, 2010.² Following issuance of this Order, the proceeding was terminated and the docket closed.

On March 24, 2010, Claimant³ served a Notification of Settlement and Motion to Close Docket. The Settlement Agreement attached to this pleading was executed on March 22, 2010, more than two months after the issuance of my January 7, 2010 Order. Paragraph 3 of the Settlement Agreement provides that Respondent shall pay the negotiated amount of \$25,000 in 60 consecutive monthly installments. Claimant's Notification and Motion made no mention of my January 7, 2010 Order, and appears to have been submitted in ignorance of the fact that this proceeding had already been terminated, notwithstanding the fact that the January 7, 2010 Order was served on Claimant and her counsel on January 8, 2010.

2. Decision

Under §§ 386.22(b) and (c) of the Agency's Rules of Practice, the parties may settle a civil penalty action at any time prior to the matter coming before the Agency decisionmaker (in which case approval by the Agency decisionmaker is not required) or they may settle the matter after it has been submitted to the Agency decisionmaker for decision but before a Final Agency Order has been issued (in which case approval by the Agency decisionmaker is required). The rules do not permit the parties to settle a case *after* a Final Agency Order has been issued by the Agency decisionmaker. Consequently, the Assistant Administrator, as the Agency decisionmaker, has no authority to approve a Settlement Agreement executed after issuance of a

² Footnote 10 of the Order directed payment one day after the Order's service date, which was January 8, 2010.

³ The Claimant on this date was actually the Acting Field Administrator for the Eastern Service Center.

Final Agency Order. Even if Claimant's Notification and Motion could be interpreted as a *de facto* petition for reconsideration of the January 7, 2010 Order, it could not be properly entertained. Section 386.64(e) of the Rules of Practice provides that the ruling on a petition for reconsideration of a Final Agency Order will be the Final Agency Order and that a petition for reconsideration of such a ruling will not be permitted. The January 7, 2010 Order was just such a ruling.

Had this particular Settlement Agreement been executed prior to January 7, 2010 and submitted to me for approval at the appropriate time, it would still have been rejected because the negotiated payment of \$25,000 fell below the cumulative minimum statutory penalties established for 49 CFR 375.211(a) (\$1,100) and 49 CFR 392.9a(a)(1) (\$25,000).⁴ While the \$25,000 negotiated payment figure could have theoretically been reached by withdrawing the § 375.211(a) charge, there is nothing in the Settlement Agreement indicating that this charge was withdrawn.

In conclusion, the Settlement Agreement is rejected and Claimant's motion to close an already-closed docket is denied.

It Is So Ordered.



Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

4.15.10

Date

⁴ See 49 U.S.C. §§ 14901(d)(1) and (d)(3), respectively. Although the minimum penalty provided in § 14901(d)(1) for violations of the household goods consumer protection regulations is \$1,000, it was adjusted to \$1,100 on March 31, 2003 in accordance with the Debt Collection Improvement Act of 1996. See 68 FR 15383 (March 31, 2003); Appendix B to 49 CFR part 386, paragraph (g)(7).

CERTIFICATE OF SERVICE

This is to certify that on this 16 day of April, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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